

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

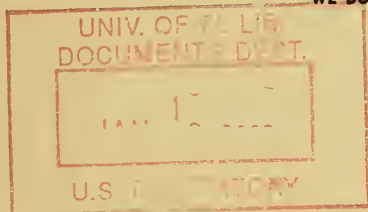
FOR THE

METAL TANK INDUSTRY

AS APPROVED ON DECEMBER 15, 1933

BY

PRESIDENT ROOSEVELT



1. Executive Order
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Approved Code No. 154

CODE OF FAIR COMPETITION

FOR THE

METAL TANK INDUSTRY

As Approved on December 15, 1933

BY

PRESIDENT ROOSEVELT

Executive Order

An application having been duly made, pursuant to and in full compliance with the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Metal Tank Industry, and hearings having been held thereon and the Administrator having rendered his report containing an analysis of the said code of fair competition together with his recommendations and findings with respect thereto, and the Administrator having found that the said code of fair competition complies in all respects with the pertinent provisions of title I of said act and that the requirements of clauses (1) and (2) of subsection (a) of section 3 of the said act have been met:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report and recommendations, and findings of the Administrator and do order that the said code of fair competition be and it is hereby approved.

FRANKLIN D. ROOSEVELT.

Approval recommended:

HUGH S. JOHNSON,
Administrator.

THE WHITE HOUSE,
December 15, 1933.

DECEMBER 4, 1933.

THE PRESIDENT,
The White House.

SIR: This is a report on the Code of Fair Competition for the Metal Tank Industry in the United States, the hearing having been conducted in Washington on October 6, 1933, in accordance with the provisions of the National Industrial Recovery Act.

PROVISIONS FOR HOURS AND WAGES

Factory employees will be limited to 40 hours per week and 8 hours per day, except in emergencies which cannot be met by the employment of additional men, when working time may be increased. Time and one half will be paid to all hourly rated employees working over 8 hours in any one day or 40 hours in any one week. Preparation, care and maintenance employees, stock and shipping clerks, and delivery men will have a 10 per cent tolerance, but are limited to 44 hours per week in any 6 weeks in any 6 months.

The limitation in hours will not apply to managerial, executive, or supervisory employees receiving more than \$35.00 per week, nor to outside service and maintenance men, traveling salesmen, and watchmen, nor to those engaged in emergency maintenance or repair work, this latter class being paid time and one half for all hours over 8 per day or 40 per week.

Accounting, clerical, service, and sales employees will be limited to 40 hours per week on a monthly average and 48 hours in any one week. This class of employees will be paid at the rate of not less than \$15.00 per week. No one in this group will have his salary reduced on account of any reduction in hours. Eighty per cent of the above minimum rates will be paid to office boys and girls and messengers.

Factory employees will receive a minimum of not less than 40 cents per hour, except in specified Southern States in which the minimum will be not less than 34 cents per hour. Equitable adjustment will be made of all rates above the minimum and no rates will be decreased. Eighty percent of the minimum rates is provided for apprentices, learners, and superannuated and disabled employees. There will be no distinction in rates between male and female employees engaged in the same work.

CHILD LABOR

The minimum age for employees will be 16 years, except in hazardous occupations, where the minimum will be 18 years. The members of the Industry will submit a list of hazardous occupations to the Code Authority within 30 days after the effective date of the Code.

ECONOMIC EFFECT OF CODE

The 40-hour limitation for factory workers results in an increase in employment of approximately 20 percent from the number employed prior to the President's Reemployment Agreement when the hours averaged 55 per week. Employees in 1932 numbered 6,300, a 49 percent drop since 1929. Since the President's Reemployment Agreement was adopted in June, employment has been increased to 8,000 persons.

The minimum wage rate of not less than 40 cents in the Northern States and 34 cents in the Southern section of the Industry will increase the general wage average about 30 percent.

There are 155 companies in the Industry, 60 of these being members of the National Steel Tank Association and having 83 percent of the volume of business, which amounted to a total of \$25,300,000 in 1932. The Industry manufactures standardized metal tanks, which are assembled in the shop for use in water service, petroleum, and other industries. Sales in 1932 were only 28 percent of the capacity of the 155 companies, but with any increase in the construction industries reemployment should be rapid in this industry.

FINDINGS

The Administrator finds that:

(a) The Code as recommended complies in all respects with the pertinent provisions of Title I of the Act, including, without limitation, subsection (a) of Section 7 and subsection (b) of Section 10 thereof; and that

(b) The applicant group imposes no inequitable restrictions on admission to membership therein and is truly representative of the Metal Tank Industry; and that

(c) The Code as recommended is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Title I of the National Industrial Recovery Act.

It is recommended, therefore, that this Code be approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

CODE OF FAIR COMPETITION

FOR THE

METAL TANK INDUSTRY

ARTICLE I—PURPOSE

To effectuate the policies of Title I of the National Industrial Recovery Act the following provisions are submitted as a Code of Fair Competition for the Metal Tank Industry, and upon approval by the President shall be the standard of fair competition for this Industry.

ARTICLE II—DEFINITIONS

The following words are used in this Code with the meanings set forth:

“Industry” shall include the manufacture of standardized steel or other metal tanks and containers when shipped in a finished condition or when sold from a published price list, including, but not limited to, the items as generally set forth in Schedule A, but not including the manufacture of such products when made by a producer of other equipment as part of his own products or as replacement parts and not for sale as separate tanks and containers for other usage.

“Association” shall mean National Steel Tank Association.

“Employee”—any person engaged in any phase of the Industry in any capacity, receiving compensation for his services, irrespective of the method or nature of payment of such compensation.

“Employer”—anyone by whom such employee is compensated or employed.

“Member of the Industry”—anyone engaged in the Industry as above defined either as an employer or on his own behalf.

“Apprentice”—a person (usually a minor) bound by indenture to serve an employer for a stated term at a predetermined wage for the period of indenture in order to learn a trade, art, or profession.

“President”, “Act”, and “Administrator”—respectively, the President of the United States, the National Industrial Recovery Act, and the Administrator of Title I of said Act.

“Administration”—the National Recovery Administration.

ARTICLE III—HOURS

(a) No employee shall be permitted to work in excess of eight (8) hours per day, which eight (8) hours shall be worked in any

period of nine (9) consecutive hours, or in excess of forty (40) hours per week, except

(b) Firemen, engineers, and electricians engaged in the preparation, care, and maintenance of plant, machinery, and production facilities, and stock and shipping clerks, and delivery employees may be permitted to work not in excess of 8.8 hours per day; provided, however, that no such employees described in this paragraph (b) shall be permitted to work in excess of forty-four (44) hours per week in any six (6) weeks in any six (6) months' period.

(c) Watchmen may be permitted to work not in excess of fifty-six (56) hours per week.

(d) Accounting, clerical, service, sales, and all other office employees may be permitted to work not in excess of forty (40) hours per week on a monthly average, and not in excess of forty-eight (48) hours in any one week.

(e) Any employee whose hours of work are prescribed under paragraph (a) or (b) hereof may, in cases of emergency production or repair work that cannot be met by the employment of additional employees, or in order to protect life or property, be permitted to work such number of hours as may be required.

(f) Any employee whose hours of work are prescribed under paragraph (a) or (b) hereof shall be paid at the rate of not less than one and one half times his regular rate of pay for all hours worked by such employee in excess of the hours specified in paragraph (a) or (b), respectively.

(g) No employer shall knowingly permit any employee to work for any time which, when totaled with that already performed with another employer or employers in this Industry, exceeds the maximum permitted herein.

(h) Nothing in this Article III shall apply to or affect the employment of any executive, administrative, technical, or supervisory employee regularly receiving more than \$35.00 per week, or any traveling or commission salesman.

ARTICLE IV—WAGES

(a) No employer shall pay any employee, except as hereinafter provided, less than at the rate of forty (40) cents per hour; provided, however, that any employer in the South may pay any employee not less than at the rate of thirty-four (34) cents per hour. The South, for the purposes of this Article IV, shall include all the United States located South of Maryland, West Virginia, and Kentucky and east of the Mississippi River.

(b) No employer shall pay any old or partially disabled employee or watchman less than at the rate of eighty (80) percent of the rate prescribed in paragraph (a) hereof; provided, however, that no employer shall employ any such employees and watchmen in an aggregate number in excess of five (5) percent of the total number of employees of such employer; provided, further, however, that any employer may employ not less than two (2) such employees or watchmen.

(c) No employer shall pay any apprentice or learner less than at the rate of eighty (80) percent of the rate prescribed in paragraph

(a) hereof; provided, however, that no employer shall pay any apprentice or learner less than at the rate prescribed in paragraph (a) hereof after such apprentice or learner shall have been employed in the Industry in excess of three (3) months; provided, further, that no employer shall employ any such apprentices and learners paid less than at the rate prescribed in paragraph (a) hereof in an aggregate number in excess of five (5) percent of the total number of employees employed by such employer upon production work.

(d) No employer shall pay any accounting, clerical, service, sales, or other office employee less than at the rate of \$15.00 per week; provided, however, that office boys and girls may be paid not less than at the rate of eighty (80) percent of the said rate of \$15.00 per week; provided further, however, that no employer shall employ such office boys and girls paid less than at the said rate of \$15.00 per week in an aggregate number in excess of five (5) percent of the total number of accounting, clerical, service, sales, or other office employees employed by such employer.

(e) The wage differentials for all operations and occupations shall be equitably readjusted, provided that in no case shall any such differential be decreased. Each employer shall report all such readjustments made by him to the Code Authority within thirty (30) days following the effective date of this Code.

(f) No member of the Industry shall subcontract with any other person for the fabrication of any product of the Industry except on condition that such other person shall comply with Articles III, IV, and V hereof for the purposes of the contract.

(g) No member of the Industry shall contract with any employee for the fabrication of any product of the Industry under any condition by which such employee may engage other persons to fabricate such product, or may become a subcontractor for the purpose of such fabrication.

(h) No employee of the classes mentioned in paragraph (d) of Article III who is now receiving compensation at a rate in excess of the minimum provided shall have his compensation reduced on account of any reduction in the weekly hours of employment to conform with the requirements of this Code.

(i) Where an employee's weekly earnings on piecework are less than his weekly earnings at the established hourly rate for his class, such employee shall be paid an amount not less than his weekly earnings at the established hourly rate for his class.

(j) No distinction in rates shall be made between male and female employees where substantially the same class of work is performed, regardless of whether compensation is calculated on an hourly, weekly, monthly, piecework, or other basis.

(k) No member of the Industry shall reclassify employees or duties of occupations performed by employees so as to defeat the purposes of the Act.

(l) Nothing in this Article IV shall apply to or affect any outside salesman compensated on a commission basis.

ARTICLE V—CHILD LABOR

No person under sixteen (16) years of age shall be employed in this Industry, nor anyone under eighteen (18) years of age at opera-

tions hazardous in nature or detrimental to health. In any State an employer shall be deemed to have complied with this provision if he shall have on file a certificate or permit duly issued by the Authority in such State empowered to issue employment or age certificates or permit showing that the employee is of the required age.

Each member of the Industry shall submit to the Code Authority within thirty (30) days of the effective date of this Code a list of hazardous occupations.

ARTICLE VI—ADMINISTRATION

1. To further effectuate the policies of the Act, a Code Authority is hereby set up for the administration of this Code.

(a) The Code Authority shall consist of seven (7) representatives of the Association (no two of whom shall represent the same member of the Association), two (2) representatives of nonmembers of the Association if the nonmembers so desire, and one or more appointees of the Administrator if he so desires. Such appointee or appointees of the Administrator shall have no vote. The representatives of the Association shall be elected by members of the Association, each member to have equal vote. The representative or representatives of the nonmembers shall be elected in like manner by the nonmembers. The Code Authority shall complete its own organization by the election of officers and appointment of agents, subject to the approval of the Administrator. The members representing the Association will, insofar as possible, be truly representative of the various sections of the country and of the various products of the Industry. The members representing the Association will be elected at the meeting of the Association to be called and held promptly after the approval of this Code by the President, and thereafter at each annual meeting thereof.

(b) In order that the Code Authority shall at all times be truly representative of the Industry, and in other respects comply with the provisions of the Act, the Administrator may provide such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, he may require an appropriate modification in the method of selection of the Code Authority.

(c) Any member of the Industry is eligible for membership in the Association and there shall be no inequitable restrictions on such membership. Any member of the Industry may participate in the preparation and any revision of and additions or supplements to this Code by assuming his share of the responsibility of administering it and paying his proper prorata share of the cost of creating and administering it, either by becoming a member of the Association or by paying his proper share of the costs to the Code Authority. There shall be no initiation fee for members of the Industry who do not become members of the Association.

2. The Code Authority shall have the following duties and powers to the extent permitted by the Act, subject to the right of the Administrator, on review, to approve or disapprove any action taken by the Code Authority.

(a) To collect from members of the Industry all data, reports, and statistics when and as required by the President and/or the Administrator and/or their agent or agents and/or the Code Authority. Such information shall be confidential. Each such member shall send his data signed by him or his proper agent to a Neutral Agency designated by the Code Authority, in a plain envelope contained in an envelope addressed to the Neutral Agency. This Neutral Agency shall assemble all such data and present to the Code Authority only the combined totals. Each such member shall retain copies of his own data to be sent direct by him to the Administrator, if required by the latter. Reports submitted by the Code Authority to the President and/or the Administrator shall be in the form prescribed and/or approved by him.

(b) To represent the Industry in conferring with the President or his agents with respect to the administration of this Code and in respect to the Act and any regulation issued thereunder.

(c) To receive complaints of violations of this Code, make investigations thereof, provide hearings thereon and attempt to adjust such complaints, and bring to the attention of the Administrator for prosecution, recommendations, and information relative to unadjusted complaints.

(d) To coordinate the administration of this Code with such Codes, if any, as may be adopted by any subdivision of this Industry, or any related Industry, with a view to providing joint and harmonious action on all matters of common interest, all with the approval of the Administrator.

(e) To study the trade practice provisions of Article VII and the operation thereof, and make recommendations from time to time to the Administrator which it deems desirable for modification or addition thereto, which upon the approval of the President, after such hearing as he may prescribe, shall become a part of this Code and have full force and effect as provisions hereof.

(f) To make rules and regulations necessary for the administration of this Code, subject to the right of any affected person to appeal to the Administrator.

(g) To establish uniform specifications for the types and sizes of the products of the Industry. When such uniform specifications have been prepared and published to the Industry, no member of the Industry shall knowingly sell or offer to sell any product of the Industry which does not conform to such uniform specifications, except as provided in paragraph (n) of Article VII. The Administrator shall have the right, upon review, to disapprove any such specifications.

(h) In addition to information required to be submitted to the Code Authority there shall be furnished to Government agencies such statistical information as the Administrator may deem necessary for the purpose recited in Section 3 (a) of the Act.

ARTICLE VII—UNFAIR PRACTICES

SECTION 1. For all purposes of this Code the following acts shall constitute unfair practices and each such act shall be a violation of this Code.

(a) Inducing or attempting to induce a breach of contract to which a member of the Industry is a party.

(b) Making false or misleading statements or descriptions, false advertising, or misbranding products.

(c) Disseminating, publishing, or circulating any false or misleading information relative to any product or price for any product of any member of the Industry, or to the credit standing or ability of any member thereof to perform any work or manufacture or produce any product, or to the conditions of employment among the employees of any member thereof, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers and/or to affect injuriously the business of competitors.

(d) For the purpose of inducing or influencing a sale, making or offering to any purchaser or prospective purchaser of any product, or to any officer, employee, agent, or representative of any such purchaser or prospective purchaser, any bribe, gratuity, gift, or other payment or remuneration, directly or indirectly.

(e) For the purpose of inducing or influencing a sale, directly or indirectly, and lavishly or excessively entertaining purchasers or prospective purchasers of the products of the Industry.

(f) For the purpose of inducing or influencing a sale, paying or offering to pay specific advertising costs of any purchaser not offered to all purchasers or prospective purchasers under like terms and conditions.

(g) Obtaining or endeavoring to obtain business by threats or coercion.

(h) Selling or offering to sell shopworn, obsolete, or second-hand products of the Industry without filing description, prices, and terms with the Code Authority before sale thereof, and securing approval from the Code Authority for such sale or offer to sell. If and when such offer to sell is approved, the Code Authority shall promptly notify all competitive members of the Industry of the description, prices, and terms of such proposed offers so filed.

(i) Selling or offering to sell any products of the Industry made from any but new material, it being the intention to prohibit the sale or offer of sale of any products of the Industry made from steel or other material which has theretofore been in use for any purpose whatsoever, or which has not been purchased by the member of the Industry from a manufacturer or seller as new material.

(j) Using seconds or other than first-grade materials in the manufacture of any products of the Industry without clearly and conspicuously stenciling such products "Made from seconds" and unless they are described, advertised, sold, and invoiced as such without any form of guarantee as to service or length of life.

(k) Selling or offering to sell, billing, or charging for a combination or assembly of regularly listed units, including or excluding installation, without listing and pricing each such unit in the quotation and invoice.

(l) Selling or offering to sell, billing, or charging for any sale on a quantity discount basis unless the quantity is definitely specified in the order and is to be shipped, billed, and charged within ninety (90) days and paid for on regular terms.

(m) For the purpose of inducing a sale, buying, or offering to buy, directly or indirectly, from purchasers or prospective purchasers of the product of the Industry, capital stock, goods, wares, and/or merchandise.

(n) Selling or offering to sell on nonstandard specifications without first clearly setting forth in writing to the Code Authority all deviations from standard specifications.

(o) Guaranteeing against advances and declines in prices of the products of the Industry, and the giving of notice to a purchaser or prospective purchaser of price changes in advance of such notice to the Code Authority, as provided in paragraph (a) of Article VIII.

(p) Making or offering to make contracts with purchasers or prospective purchasers which provide for price reductions or rebates on the basis of combining separate orders.

(q) Consigning or offering to consign products of the Industry to be paid for as sold.

(r) Accepting or offering to accept second-hand products of the Industry as payment, in whole or in part, for products of the Industry.

(s) Changing quotations, except to adjust such quotations to changes in specifications or to correct bona fide errors, in order to meet or better competitive prices.

(t) Storing of products of the Industry on the property of any user or purchaser or prospective purchaser thereof.

(u) Selling or offering to sell below individual's cost. The Code Authority shall within ninety (90) days from the effective date of this code determine a uniform method of cost accounting, subject to the approval of the Administrator, to be used by all members of the Industry in determining cost.

(v) Making or offering to make to a purchaser or prospective purchaser a guarantee or warranty more liberal than determined from time to time by the Code Authority and approved by the Administrator.

SEC. 2. Any deviation from the standards set forth in this Article VII, or any amendments thereto, by any member of the Industry, either directly or indirectly through a distributor or anyone else, shall be considered an unfair method of competition and a violation of this Code by such member.

ARTICLE VIII—TERMS AND PRICES

(a) Since it has been the generally recognized practice of the Industry to sell products on the basis of printed net price lists or price lists with discount sheets and fixed terms of payment which are distributed to the trade, each member of the Industry shall, within five (5) days after the effective date of this Code, file with the Code Authority net price lists or price lists and discount sheets as the case may be, individually prepared by him, showing his current net prices, or prices and discounts and terms of payment. Sufficient copies and revisions thereof of printed net price lists or price lists with discount sheets and fixed terms of payment shall be furnished to the Code Authority for distribution by it to the mem-

bers of the Industry affected thereby. Revised net price lists or price lists with discount sheets may be filed from time to time thereafter with the Code Authority by any member of the Industry to become effective upon a date specified by such member of the Industry, which date shall be not less than ten (10) days after the filing of such revised prices at the office of the Code Authority, and copies thereof, with notice of the effective date specified, shall be immediately sent to all known members of the Industry affected thereby, who may file, if they so desire, revisions of their net price lists or price lists with discount sheets, which, if filed not less than five (5) days previous to such effective date, shall take effect upon the date when the revised net price lists or price lists with discount sheets first filed shall go into effect.

(b) No member of the Industry shall sell any product of the Industry at prices, discounts, or terms of payment different from the schedule of such member on file with the Code Authority as above provided.

(c) The operation of the foregoing provisions in regard to price lists shall at all times be subject to the approval of the Administrator and, if it be the belief of the Code Authority that any net price lists or price lists with discount sheets and fixed terms of payment submitted will represent sales below the cost of the member submitting same, the Code Authority shall conduct an investigation up to the limit of its power under the Act, to determine whether any sales in accordance with such submitted price lists will constitute a violation of paragraph (u) of Article VII forbidding sales below cost. If it is determined by the Code Authority that any such sale will constitute a violation of said paragraph (u) of Article VII, the Code Authority shall without any delay report said member to the proper authorities for prosecution to the full extent provided by the Act.

ARTICLE IX—GENERAL

(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

(d) This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Section 10 (b) of the Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act and specifically, but without limitations, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

(e) Within each state, this Code shall not supersede the laws of any such state imposing more stringent requirements, regulating the age of employees, wages, hours of work or health, fire, or general working conditions, than under this Code.

(f) Where the costs of executing contracts entered into in the Industry are increased as a result of the enactment of the Act and by the provisions of this Code, or where any contracts entered into by an employer subject to this Code, are inconsistent with the provisions thereof, it is equitable and promotive of the purposes of the Act that appropriate adjustments of such contracts be arrived at by arbitral proceedings or otherwise, and with the assistance of the Code Authority members of the Industry should make such adjustments, but not in those cases involving the same general transaction or set of transactions where similar appropriate adjustments are not made with the members of the Industry. Further, that where the performance of orders accepted prior to the effective date of this Code is delayed or prolonged as a result of the operation of provisions of this Code, appropriate additional time should be allowed for the completion of such orders.

(g) Such of the provisions of this Code as are not required to be included therein by the Act may, with the approval of the President, be modified or eliminated as changes in the circumstances or experience may indicate. It is contemplated that from time to time supplementary provisions to this Code or additional codes will be submitted for the approval of the President to prevent unfair competition in price and other unfair and destructive competitive practices and to effectuate the other purposes and policies of Title I of the Act consistent with the provisions thereof.

(h) No provision in this Code shall be interpreted or applied in such manner as to:

- (1) Promote monopolies or monopolistic practices;
- (2) Permit or encourage unfair competition;
- (3) Eliminate or oppress small enterprise; or
- (4) Discriminate against small enterprises.

(i) If any employer in this Industry is also an employer in any other Industry, the provisions of this Code shall apply to and affect only that part of the business of such employer which is a part of the Industry covered by this Code.

(j) Each employer shall post in conspicuous places full copies of this Code.

ARTICLE X—EFFECTIVE DATE

This Code shall become effective ten (10) days after the date of its approval by the President and shall apply to all persons engaged in the Industry.

Approved Code No. 154.
Registry No. 1136-01.

SCHEDULE A

Class 1.—Bulk Storage Tanks, Horizontal and Vertical, for petroleum products and other liquids to be used for pressures not to exceed fifty (50) pounds per square inch, including steel supports, ladders, and walkways for same. Underground Storage Tanks for petroleum products and other liquids of the type used for Filling Station and domestic purposes. Tractor Tender and Skid Tanks and other tanks for petroleum products and other liquids.

Class 2.—Hot-Water Storage Tanks and Hydro-Pneumatic Tanks, 120 gallons and over.

Class 3.—Air Receiver Tanks.

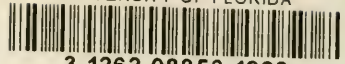
Class 4.—Septic Tanks and Basement Storage Tanks and/or supports for fuel oil.

Class 5.—Truck and Trailer Tanks.

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